Office - Supreme Court, U. S.
FILED
JAN 6 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 615

STEWART DIE CASTING CORPORATION,
A CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

SILAS H. STRAWN,
FRANK H. TOWNER,
Counsel for Petitioner.

THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

INDEX.

	PAGE
The requirement with respect to the sit-down strikers.	1
The requirement with respect to the persons listed in Appendix B to the Decision and Order.....	4
The requirement with respect to unknown persons on strike on March 23, 1937.....	4

Cases Cited.

Globe Cotton Mills v. Labor Board, 103 Fed. (2) 91...	5
McNeely, etc., Co. v. Labor Board, 106 Fed. (2) 878...	3
Republic Steel Corp. v. Labor Board, 107 Fed. (2) 472.	4

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 615.

STEWART DIE CASTING CORPORATION,
A CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

We wish to make a brief reply to the argument submitted by Respondent herein in opposition to our petition for a writ of certiorari. Many of the facts stated in Respondent's brief relate to issues which have not been presented to this Court, but we shall confine our reply to three points urged in the petition.

1. In support of the conclusion reached by the lower court with respect to the sit-down strikers here involved, it is said by Respondent (pp. 9-12, Resp. Br.) that the conclusion of the lower court should be upheld because Petitioner's objection to the granting of benefits to the sit-down strikers was not made before the Board and should not now be considered; because the record does not show the identity

of the sit-down strikers; and because of lack of violence in the sit-down strike and lack of damage resulting therefrom.

The suggestion that this point was not sufficiently raised in the proceedings before Respondent is an afterthought. It was raised generally in Petitioner's exceptions to the Intermediate Report herein (R. 1573). The filing of these exceptions was Petitioner's first opportunity to question the propriety of this requirement, which, notwithstanding the exceptions, was carried into the order of Respondent.

The lower court thought it had a right to pass on the matter, notwithstanding Section 10(e) of the Act, and its action in so doing was not and is not questioned by Respondent. In any case, the question is one of Respondent's power under the Act, which cannot be enlarged except by the Congress.

So far as concerns the obligation of Petitioner to identify the sit-down strikers, this matter was dealt with in our brief in support of our petition (pp. 3-5). So far as concerns the claim of non-violence in the sit-down strike and lack of damage resulting therefrom, we direct attention to the fact that the strike prevented the Company from operating, since the strikers seized the ground floor of the plant in which was located all of Petitioner's machinery and other essentials to operation (R. 1023, 1024). The strikers were not able to exclude Petitioner's officials from the plant, because those officials, having heard rumors that something was to take place (R. 953), had already taken possession of the upper part of the building where the offices were located (R. 1024).

Notwithstanding the occupation of these offices by Petitioner's officers, the sit-down strike did paralyze Petitioner's operations. The avowed purpose of the strike was to produce this result by stopping production in the plant (R.

163) and it had this effect (R. 977, 1012-1014) at a time when the plant was busy and Petitioner was extremely anxious to operate (R. 976). The occupation of Petitioner's plant actually compelled a shut-down for a week after the strikers were ejected and it is idle to suggest that such an occupation and enforced shut-down did not impose a damage upon Petitioner.

Such damage was just as real as any damage which would have resulted from physical injury to Petitioner's tools, machines, and other properties; and was certainly as extensive as that suffered in the *McNeely* case, 106 Fed. (2) 878. The sit-down strike was a violation of the Criminal Code of Illinois (Ch. 38, Ill. Rev. Stat., 1939), and those who participated therein should not be given rights under the law because their illegal act did not damage Petitioner as much as it might have done.

Nor was the termination of the sit-down strike as peaceful as is represented. To gain entrance to Petitioner's plant the police were forced to go through a door with axes (R. 164, 956) and the strikers only left because they were told to get out "or else" (R. 164). Nor is it important that there may not now be as many sit-down strikes in the country as formerly. The sit-down strike here involved is still of major importance to Petitioner, since the order of Respondent requires Petitioner to pay large sums of money to the sit-down strikers and to restore many of them to their employment with Petitioner.

2. With respect to the status of the persons listed in Appendix B to Respondent's Decision and Order it is only urged (pp. 12, 13, Resp. Br.) that the complaint issued by Respondent set forth no new unfair labor practice. This is contrary to the fact shown by the record. The particular discriminations alleged against Petitioner in the charge upon which that complaint was based were (R. 37) that Petitioner employed strike breakers; that it refused to dis-

charge them; that it refused to reinstate employees who were members of the union; and that it refused to reimburse reinstated employees who were members of the union for loss of pay, and reinstate them to their former positions in Petitioner's plant.

With respect to the persons listed in the charge, that document only alleges that those persons had either been "refused reinstatement or employment by the company following the strike, or have been reemployed without reimbursement for loss of pay or reinstated to their former positions in the plant." Nowhere in the charge is there any complaint that anybody, whether listed in the charge or not so listed, had been restored to his position subsequent to the strike, and had then been discharged as a result of an illegal act on the part of Petitioner. Yet that is the specific allegation of the complaint with respect to the 41 individuals listed in Appendix B to Respondent's Decision and Order.

Certainly, in awarding benefits to these persons, Respondent did more than elaborate "with particularity" an allegation already contained in the charge. On the contrary, it is perfectly obvious that the charge did not contain any allegations with respect to the discharge of these persons subsequent to their reemployment, and that such allegations first appear in the complaint itself.

3. With respect to the requirement of Respondent's Decision and Order that all persons on strike on March 23, 1937 should be offered reemployment and, under some circumstances, be given back pay, it is only suggested (pp. 13, 14, Resp. Br.) that this case is ruled by the decision in the *Republic Steel Corporation* case, 107 Fed. (2) 472, in which this Court granted certiorari on another point (301 U. S. 655). It is true that in that case it was held that reinstatement could be required, even though the issue was

not tendered in the complaint, and we so stated in our brief in support of our petition (p. 10).

The decision in the *Globe Cotton Mills* case, 103 Fed. (2) 91, 93, appears, however, to be to the contrary. Moreover, we do not base our claim that this requirement is invalid solely upon the ground that the issue was not presented by the complaint herein, which apparently was the only point upon which the court ruled in the *Republic Steel Corporation* case, 107 Fed. (2) 472. We complain of it also for the reason that the record herein contains no proof supporting any award whatsoever to the unnamed and unknown beneficiaries of this portion of Respondent's order (see pp. 10-12, Brief in Support of Petition). It requires no argument to demonstrate the invalidity of a requirement having no evidence at all to support it. The fact that such a requirement may have been sustained in other cases where its propriety was not drawn in question is not conclusive here.

We respectfully submit that the writ prayed for herein should be granted.

SILAS H. STRAWN,
FRANK H. TOWNER,
Counsel for Petitioner.